

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JOSE LUIS VELASQUEZ,

Plaintiff,

v.

CHRISTOPHER GLENN,

Defendant.

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06-656

Civil Action No.: _____

* * * * *

COMPLAINT

Plaintiff, by his undersigned attorneys, alleges as follows:

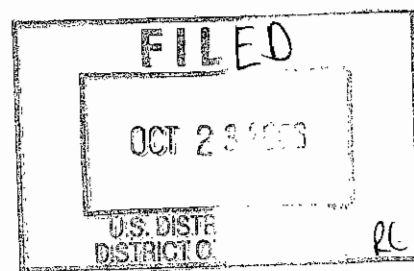
I. INTRODUCTION

1. Plaintiff, who has been employed in Sussex County, Delaware by defendant Christopher Glenn and by the Fresh Cut Lawn and Landscape Service, Inc., brings this action for monetary relief for Glenn's willful failure to pay him promised wages and "time and a half" for overtime wages as required by federal and state law.

2. The action arises from Glenn's violations of plaintiff's rights under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq.

II. JURISDICTION

3. This court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal-question jurisdiction) and 29 U.S.C. § 216(b) (FLSA) and 28 U.S.C. § 1367 (supplemental jurisdiction).



III. PARTIES AND OTHERS

4. Plaintiff Jose Luis Velasquez resides at 3 Maple Street, Georgetown, DE 19947, and has been employed by defendant.

5. Pursuant to 29 U.S.C. § 216(b), plaintiff has consented in writing to being a plaintiff in this action. His consent form is attached as Exhibit A to this Complaint.

6. Fresh Cut Lawn and Landscape Services is a Delaware corporation with its offices near Lewes, Delaware. Fresh Cut is an enterprise engaged in interstate commerce, and is or has been an employer of plaintiff within the meaning of the FLSA Payment and Collection law. It is now in bankruptcy and is not sued as a defendant in this case.

7. Defendant Christopher Glenn, the chief executive officer of Fresh Cut, has a business address of 25414 Prime Hook Road, Milton, Delaware 19968-2750. He is an “employer” under FLSA law and, as such, is fully liable to plaintiff.

IV. STATEMENT OF FACTS

8. Plaintiff has worked for defendant as a laborer in his business of concrete pouring and landscaping.

9. The nature of the plaintiff’s work has been such that he frequently worked for defendant in excess of 40 hours per week.

10. Defendant contracted with his employee to pay him on an hourly basis for each hour worked. Defendant failed to abide by this contract and to pay his employee for each hour worked.

11. Defendant contracted with his employee to pay him time and a half for weekly overtime hours. Defendant failed to abide by this agreement and fully compensate him for overtime work.

12. Furthermore, as defined by Section 207 of the FLSA, all hours worked by plaintiffs in excess of 40 hours per week are “overtime” hours, payable at a rate of one and one-half times the regular hourly rate.

13. Glenn has failed to pay plaintiff in full for overtime work, compensation to which he was entitled under federal law.

COUNT I

FAIR LABOR STANDARDS ACT

14. Plaintiff repeats and incorporates by reference the allegations set forth above.

15. Glenn violated the FLSA by knowingly failing to compensate plaintiff at a rate of one and one-half times his regular hourly wage for hours worked in excess of 40 hours per week in violation of 29 U.S.C. § 207(a)(1). Defendant’s actions were willful.

16. Glenn is liable to plaintiff, under 29 U.S.C. § 216(b) of the FLSA, for his unpaid overtime compensation, plus an additional equal amount as liquidated damages, court costs, reasonable attorneys’ fees and expenses, and any other relief deemed appropriate by the court.

COUNT II

CONTRACT

17. Plaintiff repeats and incorporates by reference the allegations set forth above.

18. Plaintiff and defendant Glenn agreed by contract and with adequate consideration to settle plaintiff’s claims for damages and attorneys’ fees arising under the FLSA law.

19. Defendant Glen has breached this valid agreement by refusing to pay the amounts agreed to.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff requests that this court:

- a. Award plaintiff his unpaid wages plus liquidated damages as required by the FLSA;
- b. Award plaintiff damages due to defendant's breach of contract.
- c. Award the plaintiff his costs, attorneys' fees and expenses, and all costs of prosecution incurred in this action, as provided in 29 U.S.C. § 216(b); and
- d. Grant such other and further relief as the court may deem just and proper.

Respectfully submitted,

SCHMITTINGER & RODRIGUEZ, PA

BY: 

DAVID A. BOSWELL (#3172)

Wachovia Bank Bldg.
4602 Highway Drive
Rehoboth Beach, DE 19971
(302) 227-1400

BROWN, GOLDSTEIN & LEVY, LLP

BY: 

C. CHRISTOPHER BROWN

120 E. Baltimore St., Suite 1700
Baltimore, MD 21202
(410) 962-1030

Attorneys for Plaintiff

EXHIBIT A
FORMULARIO DE PERMISO PARA PARTICIPAR
(Opt-In Consent Form)

Berduo-DeLeon v Fresh Cut Lawn & Landscaping Service, Inc.

Completar y enviar por correo a:

C. Christopher Brown
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 1700
Baltimore, MD 21202-6701

Nombre: Jose Luis Velasquez S.S.# -2573.
Dirección: 7A N. King St. Teléfono Laboral: _____
Georgetown, DE 19947. Teléfono de la Casa: (302) 841-8544.

PERMISO PARA UNIR A LA ACCION COLECTIVA
De acuerdo con la "Ley de Normas Razonables de Trabajo"
(Federal Labor Standards Act), 29 U.S.C. § 216 (b)

1. Doy mi consentimiento y estoy de acuerdo de seguir cualquier reclamo que surge de horas extras trabajados (sobretiempo) y no abonados por Fresh Cut Lawn and Landscaping Service ("Fresh Cut").
2. He trabajado como empleado de Fresh Cut realizando trabajos de mantenimiento, mantenimiento y construcción de jardines, o concreto desde el o alrededor del 3/94 (mes, año) hasta o alrededor del 8/94 (mes, año).
3. Durante el periodo anteriormente mencionado, trabaje en exceso de (40) horas semanales, pero no fue pagado el sobretiempo de tiempo y medio.
4. Entiendo que este juicio se entabla bajo la "Ley de Normas Razonables de Trabajo de 1938), como enmendado, 29 U.S.C. § 201, et.seq. Por este medio doy mi consentimiento, estoy de acuerdo y elijo participar como un demandante y seré obligado por cualquier fallo del Tribunal o cualquier arreglo o transacción de este litigio.
5. Por este medio designo a las oficina de Brown, Goldstein & Levy para representarme para los propósitos de este litigio.
6. Además nombro los representantes de esta colectiva como mis agentes para hacer decisiones de mi parte con respecto a la litigación, la manera y los métodos de la conducción del litigio, el llegar a un acuerdo con los abogados de los Reclamantes con respecto a los honorarios y costos de los abogados, y cualquier otro punto que pertenece a este juicio.

6/7/05
(Fecha Firmado)

Jose Luis Velasquez
(Firma)

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JOSE LUIS VELASQUEZ

(b) County of Residence of First Listed Plaintiff Sussex County, DE
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) (302) 227-1400
David A. Boswell, Schmittinger & Rodriguez,
P.A., 4602 Highway One, Rehoboth DE 19971

DEFENDANTS

CHRISTOPHER GLENN

County of Residence of First Listed Defendant Sussex County, DE
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

FLSA, 29 U.S.C. Sec. 201 et seq.

Brief description of cause:

Unpaid wages and overtime pay**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

October 19, 2006

SIGNATURE OF ATTORNEY OF RECORD

David A. Boswell

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

SCHMITTINGER AND RODRIGUEZ, P.A.

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TELECOPIER (302) 378-1659

*ALSO ADMITTED IN MARYLAND

October 19, 2006

Dr. Peter T. Dalleo, Clerk
U.S. District Court for
the District of Delaware
844 N. King Street, Room 4209
Lock Box 18
Wilmington, DE 19801

Re: Velasquez v. Glenn
Our file 06-622R

Dear Dr. Dalleo:

Enclosed please find the original, two photocopies and an electronic copy in .pdf format of each of a Civil Cover Sheet, Complaint, Summons, and Motion and Order for Admission Pro Hac Vice in the above-referenced, new action, together with a \$350.00 check for the filing fee, and another, \$25.00 check for the Motion and Order for Admission Pro Hac Vice.

Please docket these pleadings and return to me the completed summons to me and a clocked-in copy of the enclosed pleadings, along with the CM/ECF electronic docket information, in the enclosed, self-addressed, stamped envelope. Thank you for your kind assistance.

Sincerely yours,


DAVID A. BOSWELL

Enclosures

cc: C. Christopher Brown, Esquire (with copy of enclosures)